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**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**

**SINGLE BENCH: HON'BLE SHRI L.C. BHADOO, J**

**WRIT PETITION NO.1790 OF 2003**

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| **PETITIONER** | | Arun Kumar Shukla, aged about 57 years, Son of late Shri K.P.Shukla, Working as Chief General Manager, Hasdeo Area of South Eastern Coalfields Limited, District-Korba (Chhattisgarh). |
| | **- Versus-** | |
| **RESPONDENTS** | 1. | South Eastern Coalfields Limited, through its Chairman-cum-Managing Director, Seepat Road, Bilaspur, Distt: Bilaspur (Chhattisgarh). |
| | 2. | Central Coalfields Limited, Darbhanga House, Ranchi (Bihar) Through its Chairman-cum-Managing Director. |

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POST FOR ORDER ON 29th July, 2003

**Sd/-**
**L.C. Bhadoo**
**Judge**

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O R D E R

(Passed on 29th July, 2003)

**By Justice L. C. Bhadoo**

1. By this petition under Article 226/227 of the Constitution of India the petitioner has challenged the issuance of Charge-sheet No.CCL.Vig./03/3969 dated 26.03.2003 by respondent No.2.

2. The petitioner's petition is that he joined the service of Coal India Limited in the year 1967 and thereafter in due course he was promoted as General Manager, Dhori where he joined on 20.11.1993. He joined Girden Area on 10.9.1996 and remained there up to 6th May 1997 as General Manager. Subsequently he was promoted as Chief General Manager vide order dated 13th November, 1997 and he is continuing to work as such on various posts. The petitioner had good academic career and excellent service record and on the basis of his outstanding performance in the Coal Industry quick,

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promotions were granted to him. When he joined at Giridih Area of Central Coalfields Limited on 10th September 1996 he was totally new to that area. C.C.L. is an independent subsidiary Company and has Board of Directors which consists of Chairman-cum-Managing, Director (Personnel), Director (Finance), Director (Technical) etc. Director (Personnel) is complete Incharge of all Personnel matters including appointment, promotion, transfer, welfare etc.

3. The Director (Personnel) proposed for engagement of an employee on temporary basis to look after the Rest House at Jayanti Coal Mines. Shri B.K. Roy submitted an application on 7.10.1996 for employment to look after the job of Care Taker. On the direction and approval of Director (Personnel) Shri B.K. Roy was given contract work on a consolidated remuneration of Rs.2500/- per month for a period of six months. The petitioner being totally new to that area was required to work under the supervision and instructions of Director (Personnel). Any disobedience of such directions/instructions would have amounted to misconduct. The petitioner merely complied with the instructions of the Director (Personnel) in the matter of engagement of Shri B.K. Roy on contract basis. Subsequently the petitioner came to know that Shri B.K.Roy was brother of the then Director (Personnel). Director (Personnel) wrote a letter dated 18th March 1997 approving engagement of Shri B.K. Roy for a further period of six months. On the basis of said direction, order dated 4th May, 1997 was issued by the petitioner thereby extending the period of contract of Shri B.K. Roy for six months with a direction to complete all winding up

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operations of the said transit camp in as much as no further extension would be given thereafter.

4. The petitioner was transferred from the Giridih Area on 6th May, 1997.

5. Subsequently for the reasons best known to the officers concerned, Shri H.N. Jha, Staff Officer (P), Giridih Area moved for regularization of Shri B.K. Roy and Shri S.C. Khera, the then Chairman, CCL, Ranchi gave regular appointment in favour of Shri B.K. Roy. The petitioner never recommended Shri B.K. Roy for regular appointment, nor did he issued any letter for regularization. The concerned authorities, at no stage considered the action of the petitioner to be misconduct for violation of any law, rules or regulations whatsoever.

6. A duly constituted Departmental Promotion Committee approved the promotion of the petitioner to the post of Chief General Manager and he was promoted as such in the CCL w.e.f. 13th November 1997. The petitioner submits that by virtue of promotion of the petitioner as Chief General Manager, misconduct if any would be deemed to have been waived of by the management.

7. On 15th June, 2001 a F.I.R. Annexure P/4 was lodged by the C.B.I. against the petitioner, Shri S.C. Khera the then CMD, CCL, Ranchi, Dr. S.S. Roy the then Director (Personnel), Shri H.N. Jha, the then Staff Officer, CCL and Shri B.K. Roy for alleged misuse of powers. The C.B.I. enquired into the matter and found that the action of the petitioner was in the normal discharge of his duty as per direction of the Director (Personnel). The C.B.I. therefore, moved an application for giving pardon to the petitioner. The Special Judge, C.B.I.,

Ranchi vide order dated 13th May, 2003 granted pardon to the petitioner and made him approver. Giving pardon and making of approver amounts to discharge of a person as has been held in A.I.R. 1954 S.C. 616. After giving the pardon by the C.B.I. as well as by the Court, the petitioner cannot be treated as an accused. As per the Vigilance Manual of Central Vigilance Commission, which is applicable in the respondent/company, during an investigation if pardon is granted then Central Vigilance Commission will send their recommendations regarding grant of immunity to such person from departmental action or punishment. The petitioner is a senior office of the Coal Industry he was entitled for consideration as Director (Technical) and Chairman-cum-Managing Director of Subsidiary Company. After 2001, several junior officers have been selected by the Public Enterprises Selection Board for being appointed as Director of the Coal Industry but the name of the petitioner was not considered for selection and appointment as the Director/CMD because of the pendency of the case, even though the petitioner was totally innocent and acted according to the directions of Dr. S.S. Roy in the matter of grant of contract appointment to Shri B.K. Roy, the petitioner has been made to suffer for no fault on his part.

8. The petitioner was surprised to receive the charge sheet dated 26th March, 2003 calling upon him to submit his reply as to why he should not be proceeded for the alleged misconduct. It is therefore prayed that this petition may kindly be allowed quashing the alleged charge sheet dated 26.3.2003 and further issue appropriate writ or order holding that in view of the

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promotion as well as the pardon granted by the Court the petitioner is entitled for appointment as Director.

9. The return has been filed on behalf of the respondents wherein they have mentioned that the petitioner should have approached the High Court at Ranchi because the misconduct committed by the petitioner was under the jurisdiction of that High Court and the C.B.I. case has also been instituted at Ranchi. The Charge sheet has also been issued from Ranchi, therefore the Ranchi High Court is the only High Court having jurisdiction to entertain such writ petition. The disciplinary proceeding is the internal matter between the employer and its employee and no Court or rule unless principle of natural justice is violated, can take away the right of the Disciplinary Authority to take disciplinary action against its erring employee for misconduct committed by him in discharge of duty enjoined upon him by his employer. There is no provision of law empowering the Court of stay departmental proceedings merely because criminal prosecution of the same person is launched in a court of law. The purpose of two proceedings is quite different. While the object of departmental proceedings is to ascertain violation of duties and obligations cast upon an employee under various service conditions and action to be taken for such misconduct, criminal prosecution confines itself to only such criminal acts that are committed by an employee. Both of them operate in two distinct and different fields and as such can proceed simultaneously. The said engagement/ appointment of Shri B.K. Roy by the petitioner was irregular infringing all the settled norms/Policy of the Company. The contention of the petitioner that the

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Department waived the right of taking departmental action after giving him promotion to the post of Chief General Manager is misconceived and contrary to the conditions of service by which the petitioner is governed. Merely promoting to the higher post, does not waive or snatch away the right of the Department to institute departmental proceedings against the employee for his past misconduct detected any time till his retirement. Since the Chief Vigilance Officer has not recommended to the CVC for grant of immunity to the petitioner from departmental action or punishment he is not entitled for immunity. It was not the Director (Personnel) but the petitioner himself proposed for engagement of an employee on temporary basis. The note sheet was personally carried to the Director (Personnel) Dr. S.S. Roy where after the letter dt. 6.9.96 signed by the CPM/TS to Director (Personal) was issued which contained the approval of engagement of one such person on ad hoc basis. Therefore the petitioner has committed misconduct. The petitioner kept the papers in his own custody without docketing and allowed Shri B.K. Roy to continue his service from 8.4.97 to 3.5.97 without any competent order. The order of extension was issued on 4.5.97. From the perusal of the imputation of the misconduct which has not yet been replied by the petitioner it would be evident that he had set forth all the grounds for converting the ad hoc appointment of Shri B.K. Roy to regular appointment. Therefore the petition of the petitioner be dismissed.

10. I have heard Mr. M.L. Jaiswal, Senior counsel with Shri S.K. Gangele for the petitioner and Shri P. S. Nair Senior counsel with the Pankaj Shrivastava for the respondent.

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11. Mr. Jaiswal argued that after granting pardon to the petitioner he stands discharged from the criminal case and in support of this submission he relied upon the judgment of the Apex Court reported in the case of A. J. Peiris Vs. State of Madras reported in A.I.R. 1954 S.C. 616 in which it has been held that the moment the pardon was tendered to the accused he must be presumed to have been discharged whereupon he ceased to be an accused and became a witness. It could not therefore be said that before tendering the pardon to him he had not been discharged.

12. The other submission of learned counsel for the petitioner is that the alleged action of the petitioner was committed in the year 1997 and the respondent/department almost for 6 years had not initiated any departmental action against the petitioner and after granting of the pardon to the petitioner by the competent Court the respondents have no right to proceed against the petitioner on the basis of the impugned charge sheet. On the ground of delay the charge sheet is liable to be quashed which has been issued with ulterior motive and just to ensure that the petitioner's promotion is held up. He further submitted that the main person involved in the appointment of Shri B.K. Roy was the Director (Personnel) Shri S.S. Roy on whose recommendation and approval, that too on contractual basis Shri B.K. Roy was appointed. Shri B.K. Roy is brother of Dr. S.S. Roy. Moreover, only the petitioner has been singled out and no charge sheet has been issued to other persons. The petitioner being subordinate to Dr. S.S. Roy he could not have dared to refuse the directions of his superior and that would have amounted to disobedience and insubordination. More

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over there was no malafide on the part of the petitioner because out of that appointment he was not personally benefited or obtained any personal gain therefore no malafide can be imputed to the petitioner. Learned counsel for the petitioner relied upon a judgment of the Apex Court in the case of State of Madhya Pradesh Vs. Bani Singh and another, reported in A.I.R. 1990 SC 1308 in which it has been held that the disciplinary proceedings-delay and laches- department aware of involvement of officer in alleged irregularities-no satisfactory explanation for inordinate delay in issuing the charge memo – disciplinary proceedings initiated against him after more than 12 years – liable to be quashed.

13. As far as the preliminary objection raised in the return Mr. Nair has not agitated this point. Even otherwise the petitioner is posted within the jurisdiction of this Court, the office of the Respondent No.1 is also at Bilaspur therefore in view of the above I am of the opinion that the preliminary objection regarding the jurisdiction of this Court is not correct.

14. A perusal of Annexure P/5 order dated 13.5.2003 passed by the learned Special Judge, C.B.I. Ranchi shows that the petitioner has been granted pardon on 13.5.2003 under section 306 of the Cr.P.C. after taking his statement and in that order it has been mentioned that the petitioner "has given his statement supporting prosecution case and specifically stated that under the influence of the order of Shri S.S. Roy the then Director of CCL he had appointed Barun Kr. Roy because he had pressurized him to appoint the said accused, who happened to be his brother. Therefore it is obvious that this petitioner Arun Kumar Shukla has made statement

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relating to the fact on the basis of that court considered him to have been directly concerned with and privy to the offence covered in the case with knowledge about the circumstances relating to same and the persons concerned there with commission of the offence. Under such circumstances I am satisfied that the evidence of Arun Kumar Shukla will be beneficial and help for coming to logical conclusion on trial for the offence covered in this case." The Investigating Officer also recommended for granting him pardon and thereby the petitioner has become a department witness. As per the decision of the Apex Court after granting pardon to the petitioner he stands discharged from the criminal case and criminal proceeding stands terminated against him.

15. A perusal of the letter dated 21st July 2003 written by the Supdt. Of Police, CBI/ACB/Ranchi to the Chairman-cum-Managing Director, Central Coalfields Limited, Darbhanga House, Ranchi shows that the petitioner has become the prosecution witness as he has become approver, under these circumstances continuance of the disciplinary proceedings against Shri Shukla for the same charges does not seem to be in accordance with the basic tenets of law, and he further mentioned that you are therefore requested to reconsider the Memorandum, issued against said Shri Shukla in the light of aforesaid developments and may take a decision compatible with law. Even in view of the above letter the C.B.I. has recommended not to reconsider the charge sheet issued to the petitioner.

16. As far as the law on the point that criminal case and departmental proceeding can go together, there cannot be two

opinions that against any public servant criminal case as well as departmental proceeding can go together and there is no bar in proceeding against public servant in a departmental enquiry. But, the Hon'ble Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another** reported in **(1999) 3 SCC 679** has held that if the departmental proceedings and the criminal case are based on identical and similar set of facts it is desirable to stay the departmental proceedings till conclusion of the criminal case and if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. Where the departmental proceedings is based on identical set of facts and where the person is acquitted by a judicial pronouncement with a findings that offence is not proved it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand.

17. In the present case also the offence for which criminal case is pending as well as the basis of departmental enquiry is the same. Both actions are based on identical and similar set of facts. When the petitioner has been granted pardon that amounts to discharge and the department had not initiated any disciplinary action against the petitioner for about six years, by the Court, that too he has been singled out as the other persons involved in the matter has not been charge sheeted. The petitioner has become departmental witness in order to prove offence against other accused, therefore, in all fairness on the part of department it is not unjust and proper to continue with the inquiry. This is oppressive. Moreover,

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looking to the part played by the petitioner in the matter of appointment of Shri B.K. Roy who is brother of Director (Personnel) Dr. S.S. Roy and on whose instruction and approval the petitioner appointed Shri B.K. Roy on contract basis. Therefore, in view of the above, continuance of the departmental enquiry against the petitioner is unjust, unfair and oppressive action of the respondents for the following reasons:-

(i) That the pardon has already been granted to the petitioner in the criminal case and he has become the prosecution witness and the pardon has been granted to the petitioner on the ground that on the basis of his evidence offence against other main accused persons can be proved. The department cannot take two stands simultaneously i.e. on the one hand the petitioner will support the department in prosecution case for proving the offence against the main accused persons and on the other hand after taking this benefit the department also wants to proceed with the departmental enquiry against the petitioner. Therefore in this situation the department cannot be allowed to take two stands.

(ii) The alleged action of the petitioner was committed in the year 1997 and it is not like that the respondents were not aware about the alleged action of the petitioner or that the alleged misconduct came to the notice of the respondents on a later stage. The respondents were sleeping for about 6 years and when the pardon has already been granted to the petitioner they cannot be permitted to continue with the disciplinary proceeding.

that too he has been singled out as against the other main persons involved in the matter no disciplinary enquiry has been initiated. The main person behind this episode appears to be Mr. S.S. Roy, but he has been allowed to retire peacefully without any stigma on his career without any departmental enquiry.

(iii) The C.B.I. vide its letter dated 21.7.2003 has recommended to the Chairman-cum-Managing Director of the respondent/company that the disciplinary proceedings against Shri Shukla for the same charge does not seem to be in accordance with the basic tenets of law. This action of department at a belated stage seems to be initiated at the crucial stage of the career of the petitioner just to debar the petitioner from consideration for promotion.

(iv) More over the stand of the petitioner is clear-cut that being subordinate of Dr. S.S. Roy he simply complied with the directions in appointing Shri B.K. Roy, brother of Dr. S.S. Roy.

18. In the result, I am of the opinion that for the reasons mentioned herein above it will be unjust, unfair, and oppressive qua the petitioner, to allow the respondents to continue with the departmental enquiry against the petitioner. Therefore, the petition is allowed and the impugned charge-sheet dt.26.3.2003 is quashed. However, the other reliefs sought by the petitioner are rejected.

**Sd/-**
**L.C. Bhadoo**
**Judge**

Thakur